

74
IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 29TH DAY OF MAY 1998

BEFORE

THE HON'BLE MR.JUSTICE K.H.N.KURANGA

CIVIL REVISION PETITION No.979 OF 1998

BETWEEN:

Shivajirao, Son of Balaram
Halbatti, aged about 52 years,
occupation: Business, residing
at Maratha Colony, Tilakwadi,
Belgaum. ..PETITIONER

(By Sri K.Giridhar, Adv.)

AND:

1. The Commissioner,
Corporation of the City
of Belgaum, Risaldar Galli,
Belgaum.
2. Subhash, son of Wamanrao
Kulkarni, Major, Occ:
Agriculture & Legal Practitioner,
residing at CTS No.1590,
Maruthi Galli, Belgaum. ..RESPONDENTS

C.R.P is filed u/s 115 of CPC against the
order dated 19.12.1997 passed in C.S.No.281/97 on
the file of the I Addl.Civil Judge, Sr.Dn., Belgaum
allowing I.A.No.5 filed u/o 6 R-17 of CPC for
seeking permission to amend the plaint.

This petition coming on for admission this day,
the Court made the following:

ORDER

The petitioner is the 2nd defendant in the
suit C.S.No.281/97 pending on the file of the
I Addl.Civil Judge, Jr.Dn., Belgaum. He has in this

h

petition challenged the order dated 19.12.1997 passed by the Court below on I.A.No.V in the said suit.

2. The respondent No.2 herein, the plaintiff filed the said suit for declaration that the impugned notice dated 22.3.1997 issued under proceedings No.PWD.MISC.SRC.96-97 by the defendant, i.e., the Commissioner, Corporation of the City of Belgaum is illegal, inoperative and unenforceable and to restrain the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property either by demolishing the same or in any other manner. It appears, the petitioner-2nd defendant ^{was} later on impleaded as defendant No.2 in the said suit. During the pendency of the said suit, in the month of March, 1997 the building in question was demolished. Therefore, the plaintiff filed I.A.No.V for amendment of the plaint. The said application has been allowed by the Court below by the impugned order dated 19.12.1997.

3. The case of the plaintiff is that he was the tenant of the building in question. In the application he has stated that the building in question was demolished in the month of March, 1996. He therefore, filed the application for amendment of the plaint. The Court below after relying upon the Judgment of this Court reported in 1995(6) KLJ 157 has allowed the application filed by the plaintiff. This Court in the

said case has held thus:-

"Amendment of Pleading based on subsequent events-Subsequent events to be taken note of by amending pleading to reduce litigation-Amendment necessary for determining real question in controversy between parties must be allowed-Dispossession of tenant during pendency of his suit for permanent injunction-His application for amendment seeking relief of restoration of possession as tenant-Amendment sought for is admissible."

The facts of the said case and the facts of the present case are similar. The only difference is that in the said case the plaintiff was the tenant of the property and he was dispossessed from the same during the pendency of the suit. In this case, the petitioner claims to be the tenant of the house and the said house has been demolished during the pendency of the same. Therefore, the Court below has rightly relied upon the ^{said} decision and held that the amendment sought for by the plaintiff has got to be allowed and accordingly, allowed the same. In the circumstances, I am of the opinion that the order passed by the court below is proper and it is not a fit case for admission and the petition is liable to be dismissed and accordingly, it is dismissed.

Sd/-
JUDGE